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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,966	08/10/2006	Mitsunori Tanaka	1248-0689PUS1	3965
2292 7590 03/18/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER MAPA, MICHAEL Y				
ART UNIT 2617		PAPER NUMBER		
NOTIFICATION DATE 03/18/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 02/20/09 have been fully considered but they are not persuasive.
2. With regards to applicants arguments that Hebeler fails to disclose claimed limitations "during completion of an inspection process for the wireless communications system prior to shipment", "selecting usable communications channels are less in number than the settable communications channels in said transmitting device and/or receiving device". The examiner respectfully disagrees. Hebeler discloses "during completion of an inspection process for the wireless communications system prior to shipment" (Figs. 2B & Column 4, Lines 8-13 of Hebeler, wherein Hebeler discloses the base station to "scan the channels to determine those channels which are clear and those which are unavailable due to interference" (inspection process) before sending the clear channel information to the handset, therefore an inspection process prior to shipment). Hebeler discloses "selecting usable communications channels are less in number than the settable communications channels in said transmitting device and/or receiving device" (Fig.3 & Column 4, Lines 17-34 of Hebeler, wherein Hebeler discloses eleven available channels for communication from a forty channel system and wherein a subset is chosen from the available channels of communication).

3. With regards to applicants arguments that Hebeler fails to disclose claimed limitation "amongst channels assigned on a frequency-by-frequency basis, said channel limitation means excludes, from a choice of the usable communications channels, a channel nearby the boundary of a usable frequency band in the wireless communications system". The examiner respectfully disagrees. Hebeler discloses choosing and using only the subset of the available channels for communication, therefore the invention excludes the other usable channels not included in the subset chosen (Column 4, Lines 38 – 45 & Column 5, TABLE 1 and TABLE 2 of Hebeler). TABLE 1 discloses only using said subset and TABLE 2 discloses the frequency range for each channel, wherein each channel has a frequency near the frequency of the other channels. Therefore by using only the subset of the available channels, Hebeler excludes the other channels nearby the boundary of the usable frequency band not within the subset chosen.

4. With regards to applicants arguments that Hebeler fails to disclose claimed limitation "remote from the transmitting device and the receiving device". The examiner respectfully disagrees. Hebeler discloses "and instruction means which is remote from the transmitting and receiving device for (i) determining at least one of the usable communications channels" (Figs. 2A - 2B & Column 4, Lines 8-13 of Hebeler, wherein Hebeler discloses the base station to scan the channels to determine those channels which are clear and those which are unavailable due to interference). Hebeler discloses

the base station and handset as both "a transmitting and receiving device" (Fig. 2A - 2B & Column 3, Lines 46 – 49 of Hebeler). As well as disclosing the base station to be remote from the handset (Column 1, Lines 58 – 63 of Hebeler). Therefore, Hebeler discloses "remote from the transmitting device and the receiving device".

5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the applicant's arguments on what the instant application entails and how it differs from the prior art, such as "the channels available to the user after shipment".) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Mapa whose telephone number is (571)270-5540. The examiner can normally be reached on MONDAY TO THURSDAY 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Corsaro can be reached on (571)272-7876. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Mapa/  
Examiner, Art Unit 2617